

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

LAURA ROUNDINE,

Plaintiff,

vs.

ETHICON, INC., ETHICON, LLC,
and JOHNSON AND JOHNSON,

Defendants.

CV 20-47-GF-BMM

**ORDER REGARDING
STIPULATED DISMISSAL OF
CERTAIN CLAIMS AND
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

Plaintiff Laura Roundine initiated this lawsuit by filing a short form complaint in a large multidistrict litigation in the United States District Court for the Southern District of West Virginia. (Doc. 1.) Defendants filed a Motion for Partial Summary Judgment in November 2018, while the case was still pending in West Virginia. (Doc. 23.)

The Southern District of West Virginia transferred Roundine's case to this Court in early-June 2020. (*See* Doc. 39.) Defendants' Motion for Partial Summary Judgment remained pending. The Court held a telephonic pretrial conference on July 22, 2020. (Doc. 58.) The Court, with the consent and input of the parties,

established a scheduling order. (*See* Doc. 59.) The Court also discussed the pending Motion for Partial Summary Judgment and directed the parties to file a stipulated motion regarding the claims that will move forward and the claims that will not. (Doc. 58.)

The parties filed a Stipulation for Dismissal of Certain Claims. (Doc. 63.) Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), the parties stipulated to the voluntary dismissal with prejudice of the following counts, with each side to bear her and their own costs:

1. Count I: Negligent Failure to Warn and Negligent Manufacturing Defect;
2. Count II: Strict Liability - Manufacturing Defect;
3. Count III: Strict Liability – Failure to Warn;
4. Count IV: Strict liability – Defective Product;
5. Count VI: Common Law Fraud;
6. Count VII: Fraudulent Concealment;
7. Count VIII: Constructive Fraud;
8. Count IX: Negligent Misrepresentation;
9. Count X: Negligent Infliction of Emotional Distress;
10. Count XI: Breach of Express Warranty;

11. Count XII: Breach of Implied Warranty;
12. Count XIII: Violation of Consumer Protection Laws;
13. Count XIV: Gross Negligence; and
14. Count XV: Unjust Enrichment.

The parties stipulated further that the following counts remain pending in this case:

1. Count I: Negligent Design Defect;
2. Count V: Strict Liability – Design Defect;
3. Count XVII: Punitive Damages; and
4. Count XVIII: Discovery Rule and Tolling.

Defendants reserved the right to seek leave to file additional motions. (Doc. 63 at 3.) Plaintiff represented that she will oppose Defendants’ motion for leave to file additional summary judgment motions. (*Id.*) The parties also agreed that Defendants’ Motion for Partial Summary Judgment (Doc. 23) is moot in light of their stipulation to the dismissal of Counts I (in part)—IV and VI—XV.

Accordingly, **IT IS HEREBY ORDERED** that the above-enumerated counts are **DISMISSED WITH PREJUDICE**, with each side to bear her and their

own costs. **IT IS FURTHER ORDERED** that Defendants' Motion for Partial Summary Judgment (Doc. 23) is **DENIED AS MOOT**.

DATED this 6th day of August, 2020.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive, flowing style.

Brian Morris, Chief District Judge
United States District Court